

ORIGINAL

FILED IN CLERK'S OFFICE

NOV 14 2003

THOMAS, Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE: TRI-STATE :
:
CREMATORY LITIGATION : MDL DOCKET NO. 1467
:
:
_____ :

FUNERAL HOME DEFENDANTS' MOTION TO EXCLUDE

Pursuant to Fed. R. Civ. P. 37(d) and/or Fed. R. Civ. P. 41(b), Funeral Home Defendants move to exclude the claims of Sue Markley, Anne Goodhew, Robert Patterson, Debbie Jo Raper and Ginger Guess (collectively, the "Plaintiffs" and each a "Plaintiff") for their repeated failures to appear for properly noticed depositions. Funeral Home Defendants respectfully request that the claims of Sue Markley, Anne Goodhew, Robert Patterson, Debbie Jo Raper and Ginger Guess be excluded and dismissed with prejudice and Funeral Home Defendants be awarded their reasonable costs and attorneys' fees incurred due to each such Plaintiff's repeated and unexcused failure to appear, and that Funeral Home Defendants have such other and further relief as this Court may deem just and proper. This motion is supported by the attached Memorandum of Law, Certificate of Good Faith Attempt to Confer,

Affidavits of Douglas D. Campbell, Robert Luskin and Walt Weinrich and supporting evidentiary materials.

Respectfully submitted this 14th day of November, 2003.

**BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP**

By: _____

Robert M. Brinson
Georgia Bar No. 082900

By: _____

J. Anderson Davis
Georgia Bar No. 211077

The Omberg House
615 West First Street
Post Office Box 5513
Rome, GA 30162-5513
Phone 706/291-8853
Fax 706/234-3574

Lead and Liaison Counsel for
Defendant Funeral Homes

CERTIFICATE OF COMPLIANCE WITH LR 5.1(B)

This is to certify that the foregoing document was prepared using Times New Roman 14 point font in accordance with LR 5.1(B).

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE: TRI-STATE :
CREMATORY LITIGATION : **MDL DOCKET NO. 1467**

_____:

AFFIDAVIT OF DOUGLAS M. CAMPBELL

STATE OF TENNESSEE,

COUNTY OF HAMILTON.

Personally appeared before me, the undersigned officer, duly authorized to administer oaths, Douglas M. Campbell, Sr. who, after being duly sworn, deposes and states as follows:

1.

I am over the age of twenty-one years, and I make this Affidavit of my own personal knowledge for use in a Motion to Exclude Claim.

2.

I am the attorney of record for Wann Funeral Home along with Skip Patty in the Tri-State Litigation MDL Docket No.1467.

3.

Sue Markley is the daughter of Jimmie Watts Patterson who died on August 16, 1998. The remains of Jimmie Watts Patterson were sent to Tri-State Crematory for cremation by Wann Funeral Home.

4.

The remains of Jimmie Watts Patterson are not among those that have been identified or recovered by the Georgia Bureau of Investigation from the property of Tri-State Crematory, Inc.

5.

Sue Markley lives in my community, less than three miles away from me. Our sons attend the same school, and I see her at the school, on the tennis courts, and within our small community on a not-infrequent basis.

6.

On May 16, 2003, the Defendants sent the Plaintiffs a notice for the deposition of Sue Markley to be taken on June 13, 2003. Sue Markley failed to appear.

7.

On July 17, 2003, the Defendants sent the Plaintiffs a notice for the deposition of Sue Markley to be taken on August 14, 2003. Sue Markley failed to appear.

8.

On August 6, 2003, counsel for Plaintiffs offered to make Sue Markley available for her deposition during the week of September 8, 2003. Accordingly, the Defendants sent a notice on August 29, 2003, for the deposition of Sue Markley to be taken September 8, 2003. Sue Markley again failed to appear.

9.

Robert Patterson is the son and Anne Goodhew is another daughter of the decedent.

10

On May 16, 2003, the Defendants sent the Plaintiffs a notice for the deposition of Robert Patterson to be taken on June 6, 2003. Robert Patterson failed to appear.

11.

On July 17, 2003, the Defendants sent the Plaintiffs a notice for the deposition of Robert Patterson to be taken on August 12, 2003. Robert Patterson failed to appear.

12.

On August 29, 2003, the Defendants sent the Plaintiffs a notice for the

deposition of Robert Patterson to be taken on September 9, 2003. Robert Patterson failed to appear.

13.

On May 16, 2003, the Defendants sent the Plaintiffs a notice for the deposition of Anne Goodhew to be taken on June 13, 2003. Anne Goodhew failed to appear.

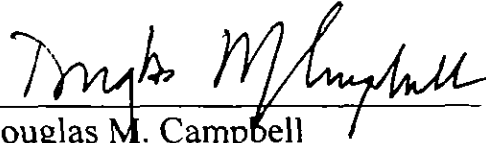
14.

On July 17, 2003, the Defendants sent the Plaintiffs a notice for the deposition of Anne Goodhew to be taken on August 21, 2003. Anne Goodhew failed to appear.

15.

On August 29, 2003, the Defendants sent the Plaintiffs a notice for the deposition of Anne Goodhew to be taken September 10, 2003. Anne Goodhew failed to appear.

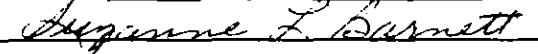
Further affiant sayeth not.



Douglas M. Campbell

Sworn to and subscribed before

me this 5th day of November, 2003.



NOTARY PUBLIC

My Commission Expires: 6-12-05

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE: TRI-STATE :
 :
CREMATORY LITIGATION : **MDL DOCKET NO. 1467**
 :
 :

AFFIDAVIT OF ROBERT A. LUSKIN

STATE OF GEORGIA,
COUNTY OF Fulton.

Personally appeared before me, the undersigned officer, duly authorized to administer oaths, ROBERT A. LUSKIN who, after being duly sworn, deposes and states as follows:

1.

I am over the age of twenty-one years, and I make this Affidavit of my own personal knowledge for use in a Motion to Exclude Claim.

2.

I am one of the attorneys of record in the Tri -State Litigation MDL Docket No. 1467.

3.

Debbie Jo Raper is the daughter Debra Fae Russell who died on December 15, 1995. The remains of Debra Fae Russell were sent to Tri-State Crematory for cremation by Sequatchie Valley Memorial Funeral & Gardens, Inc.

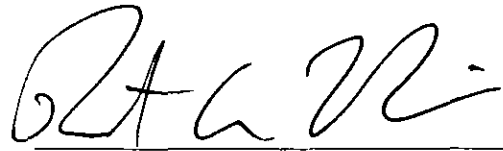
4.

The remains of Debra Fae Russell are not among those that have been identified or recovered by the Georgia Bureau of Investigation from the property of Tri-State Crematory, Inc.

5.

On June 5, 2003 and August 8, 2003 the Defendant attempted to take the deposition of Debbie Jo Raper as agreed to by counsel. On both occasions, the witness Debbie Jo Raper failed to appear. A true and correct copy of the Notary's Certification Re: Failure of Witness to Appear for the Taking of Her Deposition of August 8, 2003 is attached hereto as Exhibit "A".

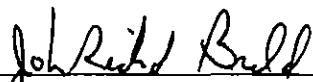
Further affiant sayeth not.



ROBERT A. LUSKIN

Sworn to and subscribed before me this

13th day of October, 2003.



NOTARY PUBLIC

My Commission Expires: Aug. 16, 2005



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE: TRI-STATE :

CREMATORY LITIGATION : **MDL DOCKET NO. 1467**

_____:

AFFIDAVIT OF WALTER J. WEINRICH

STATE OF PENNSYLVANIA,
COUNTY OF MONTGOMERY.

Personally appeared before me, the undersigned officer, duly authorized to administer oaths, Walter J. Weinrich, who, after being duly sworn, deposes and states as follows:

1.

I am over the age of twenty-one years, and I make this Affidavit of my own personal knowledge for use in a Motion to Exclude Claim.

2.

I am the attorney of record for Turner Funeral Home along with Martin H. Karo in the Tri-State Litigation MDL Docket No.1467.

3.

Ginger Guest is the daughter of Roy Gilbert Johnson who died on August 9, 1993. The remains of Roy Gilbert Johnson were sent to Tri-State Crematory, Inc. for cremation by Turner Funeral Home.

4.

The remains of Roy Gilbert Johnson are not among those that have been identified or recovered by the Georgia Bureau of Investigation from the property of Tri-State Crematory, Inc.


5.

On June 19, 2003 the Defendant scheduled the deposition of Ginger Guest as agreed to by counsel. The deposition was canceled by plaintiff.

6.

On August 28, 2003 and October 17, 2003 the Defendant attempted to take the deposition of Ginger Guest as agreed by counsel. On both occasions, the witness, Ginger Guest, failed to appear.

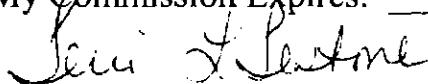
Further affiant sayeth not.

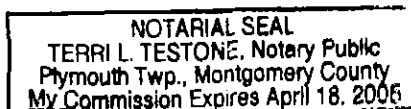

Walter J. Weinrich

Sworn to and subscribed before
me this 29th day of October, 2003.

NOTARY PUBLIC

My Commission Expires: _____





CERTIFICATE OF SERVICE

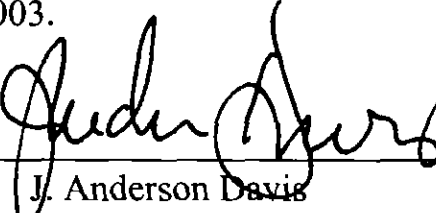
This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Funeral Home Defendants' Motion to Exclude** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

Robert H. Smalley, III, Esquire
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison for Plaintiffs

McCracken Poston, Jr., Esquire
OFFICE McCRACKEN POSTON
Post Office Box 1130
Ringgold, GA 30736
Liaison/Lead Counsel for Tri-State
Crematory, Inc. and the Marsh Family

Frank L. Jenkins, Esquire
JENKINS & OLSON, P.C.
15 South Public Square
Cartersville, GA 30120-3350

This 14th day of November, 2003.



J. Anderson Davis
Georgia Bar No. 211077

ORIGINAL

FILED IN CLERK'S OFFICE

NOV 14 2003

LUTHER D. THOMAS (Clerk
By: *[Signature]* Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE: TRI-STATE

CREMATORY LITIGATION

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:
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:
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MDL DOCKET NO. 1467

**MEMORANDUM OF LAW IN SUPPORT OF
FUNERAL HOME DEFENDANTS' MOTION TO EXCLUDE**

Funeral Home Defendants have sought to depose Sue Markley, Anne Goodhew Robert Patterson, Debbie Jo Raper, and Ginger Guess (hereinafter collectively Plaintiffs and each a Plaintiff). Sue Markley, Anne Goodhew and Robert Patterson claim their mother was sent to Tri-State Crematory by Wann Funeral Home. Debbie Jo Raper claims her mother was sent to Tri-State Crematory by Sequatchie Valley Memorial Funeral Home. Ginger Guess claims her father was sent to Tri-State Crematory by Turner Funeral Home.

These Plaintiffs were served notices for their respective depositions. Despite the fact that Funeral Home Defendants prepared for these scheduled depositions, and in some instances appeared for these scheduled depositions, Plaintiffs failed to appear for their scheduled and noticed depositions. These Plaintiffs also failed to appear for

re-scheduled depositions. Therefore, Funeral Home Defendants request that the claims of these Plaintiffs be excluded and dismissed with prejudice.

I. **FACTS**

Pursuant to the Court's Order of May 27, 2003, Funeral Home Defendants were authorized to conduct the depositions of each of the Plaintiffs who have claims against the Funeral Home Defendants. Sue Markley, Anne Goodhew and Robert Patterson have been identified by Plaintiffs' counsel as persons who have claims against Wann Funeral Home, Inc., a named defendant in this action. Mrs. Markley, Ms. Goodhew and Mr. Patterson are allegedly the next of kin of Jimmie Waitts Patterson, who died on August 16, 1998 and whose funeral arrangements were handled by Wann Funeral Home.

On August 11, 2003, Douglas M. Campbell, the attorney for Wann Funeral Home, sent a letter to Leslie Byran, the attorney for Sue Markley, Anne Goodhew and Robert Patterson, requesting that these Plaintiffs be made available for depositions. See Exhibit A. Subsequently, the deposition of Sue Markley was originally noticed on July 17, 2003 and scheduled to be held on August 14, 2003 at 9:00 a.m. See Exhibit B. However, on August 7, 2003, Ms. Bryan, requested that this deposition

be re-scheduled for the week September 8, 2003 or September 15, 2003. See Exhibit C. The deposition was noticed again on August 29, 2003 and scheduled to be held on September 8, 2003 at 2:00 p.m. See Exhibit D. Ms. Bryan then contacted Funeral Home Defendants again via e-mail on September 2, 2003 and reported that she could not be available on September 8, 2003 for Ms. Markley's scheduled deposition. See Exhibit E. Ms. Bryan stated that Ms. Markley would be out of the country from September 10, 2003 through September 18, 2003 and would not be available for depositions during these dates either.

The deposition of Robert Patterson was originally noticed on July 17, 2003 and scheduled to be held on August 12, 2003. See Exhibit B. However, on August 7, 2003, Ms. Bryan sent an e-mail requesting that Mr. Patterson's August 12, 2003 deposition be postponed. See Exhibit C. Funeral Home Defendants consented to this postponement and the deposition of Mr. Patterson was re-noticed on August 29, 2003 and re-scheduled for September 9, 2003 at 10:00 a.m. See Exhibit D. Ms. Bryan then informed Funeral Home Defendants on September 2, 2003 that Mr. Patterson was not available for his September 9, 2003 deposition. See Exhibit E.

Anne Goodhew's deposition was originally noticed on July 17, 2003 and

scheduled for August 21, 2003. See Exhibit B. On August 7, 2003 Ms. Bryan sought to reschedule Ms. Goodhew's deposition because Ms. Goodhew lives out of the country. See Exhibit C. Ms. Goodhew's deposition was then re-noticed on August 29, 2003 and re-scheduled for September 10, 2003 at 10:00 am. See Exhibit D. However, on September 2, 2003, Ms. Bryan informed Funeral Home Defendants that Ms. Goodhew would not be available for her deposition. See Exhibit E.

Debbie Jo Raper has been identified by Plaintiffs' counsel as having claims against Sequatchie Memorial Funeral Home, a Funeral Home Defendant in this action. Ms. Raper is allegedly the next of kin of Debra Fae Russell, who died on December 15, 1995 and whose funeral arrangements were handled by Sequatchie Valley Memorial Funeral Home.

The deposition of Ms. Raper was originally scheduled to be held on June 5, 2003 at 2:00 p.m.. Ms. Raper failed to appear at the deposition. On July 17, 2003, the deposition of Ms. Raper was noticed and scheduled to be held on August 8, 2003 at 9:00 A.M. See Exhibit B. On August 8, 2003, Ms. Raper again failed to appear at the deposition. See Exhibit F.

Ginger Guess has been identified by Plaintiffs' counsel as having claims

against Turner Funeral Home, a Funeral Home Defendant in this action. Ms. Guess is allegedly the next of kin of Roy Gilbert Johnson, who died August 9, 1993 and whose funeral arrangements were handled by Turner Funeral Home.

The deposition of Ms. Guess was originally scheduled to be held on June 19, 2003 at 9:00 AM.. Ms. Guess failed to appear at her deposition. The deposition was noticed again on July 25, 2003 and scheduled to be held on August 28, 2003 at 9:00 A.M. See Exhibit G. Ms. Guess failed to appear again at the deposition. See Exhibit H. Subsequently, Ms. Guess's deposition was scheduled for October 17, 2003 at 10:00 A.M. Ms. Guess failed to appear again at this deposition. See Exhibit I.

II. ARGUMENT AND CITATION OF AUTHORITIES

Rule 37(d) authorizes a district court to dismiss a complaint for, among other things, a party's failure to appear for a properly noticed deposition. Fed. R. Civ. P. 37(d). Consistent with Rule 37(d), the Eleventh Circuit has upheld a district court's dismissal of a cause of action where the plaintiff repeatedly fails to appear and give deposition testimony. Hashemi v. Campaigner Pubs, Inc., 737 F.2d 1538, 1538 (11th Cir. 1984); see also, e.g., League v. Graham (In re Graham), 191 B.R. 489 (Bankr. N.D. Ga. 1996) (dismissing action pursuant to Rule 37(d) due to party's failure to

appear for deposition); Navarro v. Pineda, 117 F.R.D. 175, 176-77(S.D. Fla. 1987)(similar proposition); Foss v. Gerstein, 58 F.R.D. 627, 630-31(S.D. Fla. 1973) (similar proposition); Sanchez v. Community Church Retirement Ctr., No. C93-1587 BAC, 1993 WL 473661, at 2 (N.D. Cal. Nov. 5, 1993) (similar proposition).

As noted above, each listed Plaintiff has, on numerous occasions, failed to appear for a properly noticed deposition without any excuse or justification. Consistent with Rule 37 (d), each such Plaintiff's claims against the respective Funeral Home Defendant should be dismissed with prejudice and reasonable fees and costs awarded in an amount to be set upon application after entitlement has been determined by this Court.

Alternatively, Rule 41(b) authorizes a district court to dismiss a complaint for, among other things, failure to comply with the Federal Rules of Civil Procedure. Fed. R. Civ. P. 41(b). "Dismissal under Rule 41(b) is appropriate where there is a clear record of 'willful' contempt and an implicit or explicit finding that lesser sanctions would not suffice." Gratton v. Great Am. Communs, 178 F.3d 1373, 1374 (11th Cir. 1999). A plaintiff's failure to appear for a noticed deposition warrants dismissal under Rule 41(b). Burns v. Georgia, No. C76-49A, 1977, 1535 (11th Cir. 1985)

(dismissing action where counsel for plaintiff failed to submit preliminary statement after twice being ordered to do so).

Counsel for Sequatchie Funeral Home, Robert Luskin, prepared for Ms. Raper's scheduled deposition of August 8, 2003 and was present at the scheduled location of the deposition in Chattanooga, Tennessee. See Exhibit F. Only after arriving at the deposition's location was Mr. Luskin informed that Ms. Raper had notified Plaintiffs' counsel that she would not be attending the deposition.

Counsel for Turner Funeral Home, Walt Weinrich, prepared for Ms. Guess's scheduled deposition of August 28, 2003 and was present at the scheduled location of the deposition in Chattanooga, Tennessee. See Exhibit H. Also present at this scheduled deposition was Plaintiffs' counsel, counsel for the Marsh Defendants and an attorney from the office of liaison and lead counsel for the Funeral Home Defendants.

As detailed above, the identified Plaintiffs have on numerous occasions failed to appear for properly noticed depositions, without excuse or justification in violation of the Federal Rules of Civil Procedure. Plaintiffs' inconsiderate and unexcusable repeated failures to appear have cost Funeral Home Defendants both time and money.

EXHIBIT "A"

LAW OFFICES
CAMPBELL & CAMPBELL
1800 JAMES BUILDING
735 BROAD STREET
CHATTANOOGA, TENN. 37402-1838

TELEPHONE
423-896-1108
TELEFAX
423-896-8888

PAUL CAMPBELL 1926-1974
PAUL CAMPBELL, JR.
MICHAEL R. CAMPBELL
DOUGLAS M. CAMPBELL
BOYD M. PATTERSON, JR.

August 11, 2003

VIA FACSIMILE - 404-881-3007

Leslie J. Bryan, Attorney
DOFFERMYRE, SHIELDS, CANFIELD, KNOWLES & DEVINE
1355 Peachtree Street, Suite 1600
Atlanta, GA 30309

Dear Leslie:

We have and thank you for your of August 6. The depositions of Robert Patterson, Sue Markley, and Sue Goodhue have been set for quite some time and appropriate notice given. We have no authority to waive the court's discovery cutoff deadline, and we do not waive our rights to rely upon it.

Be that as it may, if you will not make these three deponents available in accordance with the notice previously filed and sent, we can be available for Markley's deposition on September 9, and can be available for Patterson and Goodhues on September 10, 11, 15, or 16. If they intend to stay plaintiffs, we intend to take their depositions.

With best wishes, we are

Yours very truly,

CAMPBELL & CAMPBELL

By: 

DMC:bb

cc: Rebecca Coble
Skip Patty. Esq.

*P.S. - Please contact Rebecca Coble on all scheduling matters, as she is the one coordinating them for all Personal Injury defendants.
Thanks. DM*

EXHIBIT "B"

FILED IN CLERK'S OFFICE
U.S.D.C. - Rome

DUPLICATE
JUL 14 2004

LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE: TRI-STATE CREMATORY)
LITIGATION) MDL DOCKET NO. 1467
)
This relates to all actions.)

NOTICE OF TAKING VIDEO-TAPED DEPOSITIONS

TO: PLAINTIFFS' LIAISON COUNSEL
MARSH COUNSEL
DEFENDANT FUNERAL HOMES COUNSEL
ALL PARTIES

YOU ARE HEREBY NOTIFIED that, on the dates and times and locations specified in the attached Deposition Schedule, Exhibit "A", counsel will proceed to take the video-taped depositions specified upon oral examination pursuant to Fed.R.Civ. P. 26 and 30. The depositions will be taken before an officer duly authorized by law to take depositions, said depositions to be taken for the purpose of discovery, use in evidence, and all other reasons allowed by law. The oral examination will continue from day-to-day until its completion. You may attend and examine.

The depositions will take place either at Grant, Konvalinka, Harrison, P.C., 900 Republic Centre, 633 Chestnut Street, in Chattanooga, Tennessee or at Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP, 615 West First Street, Rome, Floyd

County, Georgia, or such other location as Counsel may agree.

Post Office Box 5513
Rome, GA 30162-5513
(Phone - 706/291-8853)
(Fax - 706/234-3574)

BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP

BY: 

J. ANDERSON DAVIS
Georgia Bar No. 211077

Liaison and Lead Counsel for Funeral Home
Defendants

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a copy of the within and foregoing Notice of Intention to Take Videotape Oral Depositions upon all parties to this matter by forwarding a true copy of same via U.S. Mail, First Class, proper postage prepaid, facsimile transmission or electronic mail (e-mail) addressed to the parties and/or counsel of record in accordance with the attached service list.

Robert H. Smalley, III, Esquire
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison for Plaintiffs

McCracken Poston, Jr., Esquire
OFFICE of McCRACKEN POSTON
Post Office Box 1130
Ringgold, GA 30736-1130
Lead Counsel for
Tri-State Crematory, Inc.

This 17th day of July, 2003.

Frank E. Jenkins, III, Esquire
JENKINS & OLSON
15 Public Square, South
Cartersville, GA 30120-3350
Lead Counsel for
the Marsh Family



J. Anderson Davis

7/17/03 130581	IN RE: TRISTATE CREMATORY DEPOSITION SCHEDULE			
DATE	TIME	TRACK 1 DRS	TRACK 2 COPPEDGE	TRACK 3 LEIFF
7/23/03	9	Trudy Arntz [Buckner-Rush] (Higgins)		
7/23/03	1	Marvin Bacon [Buckner-Rush] (Higgins)		
7/23/03	4	Charles Bacon [Buckner-Rush] (Higgins)		
7/24/03	9	Pauline Bell [Buckner-Rush] (Higgins)		Lisa Jenison [Franklin-Strickland] (Higney)
7/24/03	1	Betty Bevins [Buckner-Rush] (Higgins)		Mark Jenison [Franklin-Strickland] (Higney)
7/24/03	4			
7/25/03	9	Scott Jenison [Franklin-Strickland] (Higney) (Leiff)		Linda Hamil [Buckner-Rush] (Higgins)
7/25/03	1	Patty Shirley [Franklin-Strickland] (Higney)		Lavonda Ridley [Buckner-Rush] (Higgins)
7/25/03	4			Tom Szabo [Buckner-Rush] (Higgins)
7/28/03	9	Myrtylene Mooney Pittman [Franklin-Strickland] (Higney) (Leiff)		Mitchell Stinett [Buckner-Rush] (Higgins)
7/28/03	1	Marsha Terrell [Franklin-Strickland] (Higney)		
7/28/03	4			
7/29/03	9	Rich Heinsman [Franklin-Strickland] (Higney)		

7/29/03	1	Ruth T. Daniels [Franklin-Strickland] (Higney) (Leiff)		
7/29/03	4	Kathy Kelly [Wann] (Campbell)		
7/30/03	9	Gretchen Edminston [Wann] (Campbell)	Florence Buttermore [W.L. Wilson] (Frost)	Dr. John Edkins [Julian Peeples] (Hawkins)
7/30/03	1			Martha Waldrop [Julian Peeples] (Hawkins)
7/30/03	4		Mary Schockley [Julian Peeples] (Hawkins)	
7/31/03	9	Doris Mitchell [Sequatchie] (Luskin)		
7/31/03	1	Joe Oden [Taylor] (Luskin)		
7/31/03	4			
8/1/03	9	Gwendolyn Walton [Franklin-Strickland] (Higney)		
8/1/03	1	Charles Walton [Franklin-Strickland] (Higney)		
8/1/03	4			
8/4/03	9	Melissa Dyer [Sequatchie] (Luskin)		
8/4/03	1	Kellie Dyer [Sequatchie] (Luskin)		
8/4/03	4	Kelby Dyer [Sequatchie] (Luskin)		
8/5/03	9	Robert Walker [Franklin-Strickland] (Higney)		
8/5/03	1	Robert Puryear [Franklin-Strickland] (Higney)		
8/5/03	4			

8/6/03	9	Syble Corriher [Moore] (Luskin) (Coppedge)		
8/6/03	1	Bobbie Snow [Ryan] (Luskin)		
8/6/03	4			
8/7/03	9			
8/7/03	1			
8/7/03	4			
8/8/03	9			Debbie Raper [Sequatchie] (Luskin)
8/8/03	1			Joanette Fitch [Taylor] (Luskin)
8/8/03	4			Lonnie B. Hassler [Taylor] (Luskin)
8/11/03	9			Deloris Headrick [Thomas] (Luskin)
8/11/03	1			James Robinson [Thomas] (Luskin)
8/11/03	4			Darryl Patterson [Thomas] (Luskin)
8/12/03	9	Thomas Weber [Putman] (Bennington)	Janice Burch Risley [Thomas] (Luskin)	Channon Walls [Franklin-Strickland] (Higney)
8/12/03	1			Celeste Walls [Franklin- Strickland] (Higney)
8/12/03	4			Robert Patterson [Wann] (Campbell)
8/13/03	9	Jenny Smith [Franklin- Strickland] (Higney)		
8/13/03	1	Steven Smith [Franklin- Strickland] (Higney)		
8/13/03	4	Stanton Smith [Franklin-Strickland] (Higney)		
8/14/03	9	Romona Waller [Taylor] (Luskin) (Leiff)		Sue Markley [Wann] (Campbell)

8/14/03	1	Kerry Taylor [Taylor] (Luskin)		
8/14/03	4			
8/15/03	9	John Fairbanks [Buckner-Rush] (Higgins)		
8/15/03	1	Debbie Fairbanks [Buckner-Rush] (Higgins)		
8/15/03	4	Selma Huart [Buckner- Rush] (Higgins)		
8/18/03	9			
8/18/03	1			
8/18/03	4			
8/19/03	9	Thomas Weber [Putman] (Bennington)		
8/19/03	1	Terry Weber [Putman] (Bennington)		
8/19/03	4			
8/20/03	9	Joseph Weber [Putman] (Bennington)		
8/20/03	1	Tess Cunningham [Putman] (Bennington)		
8/20/03	4			
8/21/03	9	Loretta Bates [Buckner- Rush] (Higgins)		Mary Newton [Putman] (Bennington)
8/21/03	1	Anna Bates [Buckner- Rush] (Higgins)		Anne Goodhew [Wann] (Campbell)
8/21/03	4	William Mason Jr. [Buckner-Rush] (Higgins)		
8/22/03	9	Shawn Everson [Buckner-Rush] (Higgins)		
8/22/03	1	Mary Fason [Buckner- Rush] (Higgins)		
8/22/03	4			

8/25/03	9	Kim Craig [Buckner-Rush] (Higgins)		
8/25/03	1	Shirley Tolf [Buckner-Rush] (Higgins)		
8/25/03	4	Nancy Smith [Buckner-Rush] (Higgins)		
8/26/03	9	Joye Wessells [Chattanooga] (Davis)		Jimmie Weilbacher [Buckner-Rush] (Higgins)
8/26/03	1	John Wessells [Chattanooga] (Davis)		Norman Jenison II [Buckner-Rush] (Higgins)
8/26/03	4	Barbra Tesar [Chattanooga] (Davis)		Norman Jenison III [Buckner-Rush] (Higgins)
8/27/03	9			Helen Mathis [Buckner-Rush] (Higgins)
8/27/03	1			Janice Moore [Buckner-Rush] (Higgins)
8/27/03	4			Jo Ann Burch [Buckner-Rush] (Higgins)
8/28/03	9			John Crabtree [Jennings] (Davis)
8/28/03	1			Jamie Crabtree [Jennings] (Davis)
8/28/03	4			Mary Clark [Kenemer] (Davis)
8/29/03	9			Daniel Green [Kenemer] (Davis)
8/29/03	1		Herman Lasater [Kenemer] (Davis)	
8/29/03	4			

EXHIBIT "C"

From: Rebecca Coble
To: dougcampbell@campbellattorneys.com
Date: 8/7/03 3:43PM
Subject: Tri-State Depositions

Mr. Campbell

Would you address the following issue for me:

I just spoke with Leslie Bryan in regards to some depositions for next week.

8/12/03-Robert Patterson-4:00 lives in NC-wants to cancel, because he is out of state

8/14/03-Sue Markley-9:00 Ms. Bryan says she is not available

8/21/03-Ann Goodhew-lives in England-wants to cancel, because out of country

Ms. Bryan wants to depose only one of the siblings, Sue Markley the week of Sept. 8 or 15.

I told her: that just because we agreed to reschedule the deposition of those that lived out of town or could not make themselves available was not a waiver of the notice.

Please let me know how to proceed.

Rebecca Coble

Rebecca Coble
Brinson, Askew, Berry
Seigler, Richardson & Davis, LLP
P.O. Box 5513
Rome, GA 30162-5513
Ph. (706) 291-8853
fax (706) 234-3574
bcoble@brinson-askew.com

From: Rebecca Coble
To: Bryan, Leslie J
Date: 8/7/03 4:20PM
Subject: Re: Tristate depositions

I just spoke with Mr. Campbell and he has agreed to postpone the depositions of Ann Goodhew and Robert Patterson. He has also agreed to take the deposition of Sue Markely on 9/8/03 at 1:00. This can be either in Chattanooga or at our offices in Rome. Let me know.

If you have question, please let me know.

Thanks,
Rebecca Coble
Paralegal to J. Anderson Davis

Rebecca Coble
Brinson, Askew, Berry
Seigler, Richardson & Davis, LLP
P.O. Box 5513
Rome, GA 30162-5513
Ph. (706) 291-8853
fax (706) 234-3574
bcoble@brinson-askew.com

>>> "Leslie J Bryan" <lbryan@dsckd.com> 08/04/03 11:03AM >>>
Rebecca - I'm trying to get information about some of the upcoming plaintiffs' depositions. My firm represents (1) Sue Markley, Ann Goodhew and Robert Patterson and (2) Ruth Tolliver Daniels. I want to confirm that those depositions are not presently scheduled and that Doug Campbell is to contact me concerning dates for the Markley group. Please let me know. Thanks.

Leslie J. Bryan
Doffermyre Shields Canfield Knowles & Devine
1355 Peachtree Street
Suite 1600
Atlanta, GA 30309
404-881-8900
404-881-3007 (fax)

EXHIBIT "D"

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE: TRI-STATE CREMATORY)
LITIGATION) MDL DOCKET NO. 1467
)
This relates to all actions.)

NOTICE OF TAKING VIDEO-TAPED DEPOSITIONS

TO: PLAINTIFFS' LIAISON COUNSEL
MARSH COUNSEL
DEFENDANT FUNERAL HOMES COUNSEL
ALL PARTIES

YOU ARE HEREBY NOTIFIED that, on the dates and times and locations specified in the attached Deposition Schedule, Exhibit "A", counsel will proceed to take the video-taped depositions specified upon oral examination pursuant to Fed.R.Civ. P. 26 and 30. The depositions will be taken before an officer duly authorized by law to take depositions, said depositions to be taken for the purpose of discovery, use in evidence, and all other reasons allowed by law. The oral examination will continue from day-to-day until its completion. You may attend and examine.

Court reporting and videography services will be provided by Brown Reporting, 1740 Peachtree Street, N.E., Atlanta, Georgia 30309; telephone: 404.876.8979; 800.637.0293; facsimile: 404.876.1269.

The depositions will take place at Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP, 615 West First Street, Rome, Floyd County, Georgia, or such other location as Counsel may agree.


This 29th day of August 2003.

BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP

ROBERT M. BRINSON
Georgia Bar No. 082900

Post Office Box 5513
Rome, GA 30162-5513
(Phone - 706/291-8853)
(Fax - 706/234-3574)
adavis@brinson-askew.com

BY:


J. ANDERSON DAVIS
Georgia Bar No. 211077

Liaison and Lead Counsel for Funeral Home
Defendants

CERTIFICATE OF SERVICE

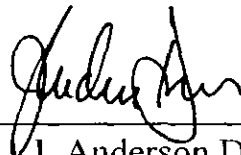
I hereby certify that I have this day served a copy of the within and foregoing Notice of Intention to Take Videotape Oral Depositions upon all parties to this matter by forwarding a true copy of same via U.S. Mail, First Class, proper postage prepaid, facsimile transmission or electronic mail (e-mail) addressed to the parties and/or counsel of record in accordance with the attached service list.

Robert H. Smalley, III, Esquire
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison for Plaintiffs

McCracken Poston, Jr., Esquire
OFFICE of McCRACKEN POSTON
Post Office Box 1130
Ringgold, GA 30736-1130
Lead Counsel for
Tri-State Crematory, Inc.

Frank E. Jenkins, III, Esquire
JENKINS & OLSON
15 Public Square, South
Cartersville, GA 30120-3350
Lead Counsel for
the Marsh Family

This 29th day of August 2003.



J. Anderson Davis

EXHIBIT "E"

From: "Leslie J Bryan" <lbryan@dsckd.com>
To: "Leslie J Bryan" <lbryan@dsckd.com>, "Rebecca Coble" <bcoble@brinson-askew.com>, <adavis@brinson-askew.com>
Date: 9/2/03 4:51PM
Subject: RE: Tri-State depositions

I have just learned that Ms. Markley is out of the country Sept. 10 through 18.

-----Original Message-----

From: Leslie J Bryan
Sent: Tuesday, September 02, 2003 11:28 AM
To: 'Rebecca Coble'; 'adavis@brinson-askew.com'
Cc: David S Hagy; Robert Smalley (rsmalley@mccamylaw.com); Kathryn Barnett (kbarnett@lchb.com)
Subject: RE: Tri-State depositions

Rebecca - we cannot make Ms. Markley available for deposition on Monday, September 8 as neither I nor David Hagy in my firm is available. I know that I originally indicated I could do Sept. 8 but I also said the deposition had to be in Atlanta and could not start until 10. Apparently, the deposition has been noticed for Rome or Chattanooga. I am simply not able to attend on Monday. I asked David Hagy to sit in for me but David has to be in court elsewhere. We are happy to work with you on dates for Ms. Markley. As to Mr. Patterson and Ms. Goodhew, I have repeatedly asked that Mr. Campbell call me to discuss those depositions. That has not happened. Neither Mr. Patterson nor Ms. Goodhew is available. Ms. Goodhew lives in London so even a telephone deposition at 10 am is unacceptable. I know that this is a headache for you and I apologize for making it more difficult. Nonetheless, we are simply not able to make Ms. Markley available on Monday.

-----Original Message-----

From: Rebecca Coble [mailto:bcoble@brinson-askew.com]
Sent: Friday, August 29, 2003 2:56 PM
To: Leslie J Bryan
Subject: Tri-State depositions

We have drafted a notice in regards to the depositions of several people and you will receive a copy from Mr. Smalley.

The following depositions have been placed on the notice:

9/8/03-2:00 Sue Markley

9/9/03-10:00 Robert Patterson

9/10/03-10:00 Anne Goodhew

I think that telephone or video depositions may be agreeable I will check.

If you have any questions please call
Rebecca Coble

Rebecca Coble
Brinson, Askew, Berry
Seigler, Richardson & Davis, LLP
P.O. Box 5513
Rome, GA 30162-5513
Ph. (706) 291-8853

EXHIBIT "F"

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ROME DIVISION

4 IN RE: TRI-STATE)
5 CREMATORY LITIGATION) MDL DOCKET NO. 1467
6

7 NOTARY'S CERTIFICATION RE FAILURE OF WITNESS
8 TO APPEAR FOR THE TAKING OF HER DEPOSITION

9 I, John P. Payne, Certified Court Reporter
10 and Notary Public within and for the State of
11 Georgia, do hereby certify:

12 That at the request of T. Jeffery Lehman,
13 Esq., attorney for the Defendant in the above-styled
14 case, I appeared at 736 Market Street, Chattanooga,
15 Tennessee, on the 8th of August, 2003, at the hour of
16 1:00 p.m. for the purpose of placing under oath and
17 taking the deposition of Debbie Jo Raper, Plaintiff
18 in the above-styled case.
19
20
21

22 B R O W N
23 *Reporting* INC.
24 25

1609 Martha Berry Blvd.
Rome, GA 30165
706-235-8300

1 I further certify that I remained at said
2 address until 1:10 p.m., during which time the
3 Plaintiff/Deponent did not appear.

4 Mr. Lehman, attorney for the Defendant,
5 made a statement for the record as follows:

6 MR. LEHMAN: This was scheduled to be the
7 deposition of Debbie Jo Raper in the Tri-State MDL
8 litigation. You've got the style and everything.
9 Ms. Gilluly has -- and it's a little bit after 1:00
10 o'clock on August 8th, 2003. I believe Ms. Raper,
11 her deposition has been scheduled by notice three or
12 four times. I'm not sure which. And each time there
13 has been a problem with her appearance. Ms. Gilluly
14 has just informed me, and I'll let you tell on the
15 record what your office has told you, that Ms. Raper
16 will not be appearing today, and so why don't you put
17 on the record what you can on that.

18 MS. GILLULY: Sure. I spoke with
19 Ms. Raper, and she stated that she spent last night
20 in the emergency room and could not attend today.

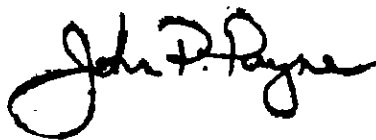
21 MR. LEHMAN: We will probably be filing a
22 motion to compel and/or a motion to dismiss her claim
23 for her failure to appear.

24 And does anybody else want to put anything
25 else on the record about Ms. Raper? Do you think

1 that covers it?

2 Good. Thanks.

3
4
5 Respectfully submitted,

6
7 
8

9 _____
10 JOHN P. PAYNE, CCR A-1006
11 My commission expires on the
12 5th day of October, 2005.
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25

EXHIBIT "G"

DUPLICATE

JUL 14 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

BSJ

IN RE: TRI-STATE CREMATORY)
LITIGATION)

MDL DOCKET NO. 1467

This relates to all actions.)

AMENDED
NOTICE OF TAKING VIDEO-TAPED DEPOSITIONS

TO: PLAINTIFFS' LIAISON COUNSEL
MARSH COUNSEL
DEFENDANT FUNERAL HOMES COUNSEL
ALL PARTIES

YOU ARE HEREBY NOTIFIED that, on the dates and times and locations specified in the attached Amended Deposition Schedule, Exhibit "A", counsel will proceed to take the video-taped depositions specified upon oral examination pursuant to Fed.R.Civ. P. 26 and 30. The depositions will be taken before an officer duly authorized by law to take depositions, said depositions to be taken for the purpose of discovery, use in evidence, and all other reasons allowed by law. The oral examination will continue from day-to-day until its completion. You may attend and examine.

The depositions will take place either at Grant, Konvalinka, Harrison, P.C., 900 Republic Centre, 633 Chestnut Street, in Chattanooga, Tennessee or at Brinson,

Askew, Berry, Seigler, Richardson & Davis, LLP, 615 West First Street, Rome, Floyd
County, Georgia, or such other location as Counsel may agree.

Post Office Box 5513
Rome, GA 30162-5513
(Phone - 706/291-8853)
(Fax - 706/234-3574)

BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP

BY: 

J. ANDERSON DAVIS
Georgia Bar No. 211077

Liaison and Lead Counsel for Funeral Home
Defendants

CERTIFICATE OF SERVICE

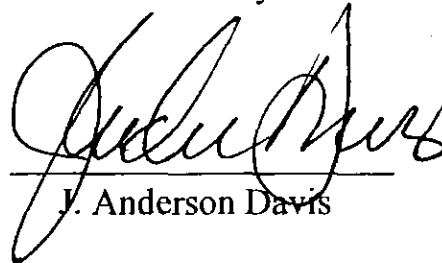
I hereby certify that I have this day served a copy of the within and foregoing Amended Notice of Intention to Take Videotape Oral Depositions upon all parties to this matter by forwarding a true copy of same via U.S. Mail, First Class, proper postage prepaid, facsimile transmission or electronic mail (e-mail) addressed to the parties and/or counsel of record in accordance with the attached service list.

Robert H. Smalley, III, Esquire
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison for Plaintiffs

McCracken Poston, Jr., Esquire
OFFICE of McCRACKEN POSTON
Post Office Box 1130
Ringgold, GA 30736-1130
Lead Counsel for
Tri-State Crematory, Inc.

This 25th day of July, 2003.

Frank E. Jenkins, III, Esquire
JENKINS & OLSON
15 Public Square, South
Cartersville, GA 30120-3350
Lead Counsel for
the Marsh Family


J. Anderson Davis

7/25/03 [2:45] 130581	IN RE: TRISTATE CREMATORY DEPOSITION SCHEDULE			
DATE	TIME	TRACK 1 DRS Grant, Konvalinka & Harris	TRACK 2 COPPEDGE Brinson, Askew & Berry	TRACK 3 LEIFF Brinson, Askew & Berry
7/23/03	9	<u>Chattanooga</u> <u>POSTPONED</u> Trudy Arntz [Buckner- Rush] (Higgins)		
7/23/03	1	<u>Chattanooga</u> <u>POSTPONED</u> Marvin Bacon [Buckner-Rush] (Higgins)		
7/23/03	4	<u>Chattanooga</u> <u>POSTPONED</u> Charles Bacon [Buckner-Rush] (Higgins)		
7/24/03	9	<u>Chattanooga</u> <u>POSTPONED</u> Pauline Bell [Buckner- Rush] (Higgins)		<u>Rome</u> <u>CANCELED</u> Lisa Jenison [Franklin- Strickland] (Higney)
7/24/03	1	<u>Chattanooga</u> <u>POSTPONED</u> Betty Bevins [Buckner- Rush] (Higgins)		<u>Rome</u> <u>CANCELED</u> Mark Jenison [Franklin- Strickland] (Higney)
7/24/03	4			
7/25/03	9			<u>Rome</u> <u>POSTPONED</u> Linda Hamil [Buckner- Rush] (Higgins) <u>Rome</u> <u>CANCELED</u> Scott Jenison [Franklin- Strickland] (Higney) (Leiff)
7/25/03	1	<u>Chattanooga</u> <u>RESCHEDULED</u> Patty Shirley [Franklin- Strickland] (Higney)		<u>Rome</u> <u>POSTPONED</u> Lavonda Ridley [Buckner-Rush] (Higgins)

7/25/03	4			<u>Rome</u> <u>POSTPONED</u> Tom Szabo [Buckner-Rush] Higgins)
7/28/03	9			<u>Rome</u> <u>POSTPONED</u> Mitchell Stinett [Buckner-Rush] (Higgins) <u>RESCHEDULED</u> Myrtylene Mooney Pittman [Franklin-Strickland] (Higney)
7/28/03	1	<u>Chattanooga</u> Marsha Terrell [Franklin-Strickland] (Higney)		
7/28/03	4			
7/29/03	9	<u>Chattanooga</u> Rich Heinsman [Franklin-Strickland] (Higney)		
7/29/03	1			<u>RESCHEDULED</u> <u>Chattanooga</u> Ruth T. Daniels [Franklin-Strickland] (Higney)
7/29/03	4	<u>Chattanooga</u> Kathy Kelly [Wann] (Campbell)		
7/30/03	9	<u>Chattanooga</u> Gretchen Edminston [Wann] (Campbell)	<u>Rome</u> Florence Buttermore [W.L. Wilson] (Frost)	<u>Rome</u> <u>RESCHEDULED</u> Dr. John Edkins [Julian Peeples] (Hawkins)
7/30/03	1			<u>Rome</u> Martha Waldrop [Julian Peeples] (Hawkins)
7/30/03	4		<u>Rome</u> Mary Schockley [Julian Peeples] (Hawkins)	

7/31/03	9	<u>Chattanooga</u> Doris Mitchell [Sequatchie] (Luskin)		
7/31/03	1	<u>Chattanooga</u> Joe Oden [Taylor] (Luskin)		
7/31/03	4			
8/1/03	9	<u>Chattanooga</u> Gwendolyn Walton [Franklin-Strickland] (Higney)		
8/1/03	1	<u>Chattanooga</u> Charles Walton [Franklin-Strickland] (Higney)		
8/1/03	4	<u>Chattanooga</u> Patricia Shirley [Franklin-Strickland] (Higney)		
8/4/03	9	<u>Chattanooga</u> Melissa Dyer [Sequatchie] (Luskin)		
8/4/03	1	<u>Chattanooga</u> Kellie Dyer [Sequatchie] (Luskin)		
8/4/03	4	<u>Chattanooga</u> Kelby Dyer [Sequatchie] (Luskin)		
8/5/03	9	<u>Chattanooga</u> Robert Walker [Franklin-Strickland] (Higney) <u>Chattanooga</u> Betty Headrick [Wann] (Patty)		

8/5/03	1	<u>Chattanooga</u> Ronald Puryear [Franklin-Strickland] (Higney) <u>Chattanooga</u> Miriam Jones [Wann] (Patty)		
8/5/03	4	<u>Chattanooga</u> Dorothy Gregory [Wann] (Patty)		
8/6/03	9	<u>Chattanooga</u> Syble Corriher [Moore] (Luskin) (Coppedge) <u>Chattanooga</u> Rachael Richards [Wann] (Patty)		
8/6/03	1	<u>Chattanooga</u> Bobbie Snow [Ryan] (Luskin) <u>Chattanooga</u> Zuki Hornyak [J. Avery Bryan] (Zirkle)		
8/6/03	4	<u>Chattanooga</u> Robert Blackburn [Turner] (Weinrich) <u>Chattanooga</u> Judy Bonine [J. Avery Bryan] (Zirkle)		
8/7/03	9	<u>Chattanooga</u> Jaonne Hobbs [Turner] (Weinrich) <u>Chattanooga</u> Robert Crawford [J. Avery Bryan] (Zirkle)		
8/7/03	1	<u>Chattanooga</u> Thomas Calderone [Turner] (Weinrich) <u>Chattanooga</u> Opal Craze [J. Avery Bryan] (Zirkle)		

8/7/03	4	<u>Chattanooga</u> <i>Julie Kinder [Turner]</i> <i>(Weinrich)</i> <u>Chattanooga</u> <i>Angela Shirley [J. Avery Bryan]</i> (Zirkle)		
8/8/03	9	<u>Chattanooga</u> <i>Lisa Cash [Turner]</i> <i>(Weinrich)</i> <u>Chattanooga</u> <i>Keith Oldaker [J. Avery Bryan]</i> (Zirkle)		<u>Rome</u> Debbie Raper [Sequatchie] (Luskin)
8/8/03	1	<u>Chattanooga</u> <i>Robert Goldizen</i> <i>[Turner] (Weinrich)</i>		<u>Rome</u> Joanette Fitch [Taylor] (Luskin)
8/8/03	4	<u>Chattanooga</u> <i>K. Bidwell [Turner]</i> <i>(Weinrich)</i>		<u>Rome</u> Lonnie B. Hassler [Taylor] (Luskin)
8/11/03	9	<u>Chattanooga</u> <i>Johnny Laymon</i> <i>[Turner] (Weinrich)</i> <u>Chattanooga</u> <i>Catherine Adams</i> <i>[Cumberland] (Penna)</i>		<u>Rome</u> Deloris Headrick [Thomas] (Luskin)
8/11/03	1	<u>Chattanooga</u> <i>Linda Staton [Turner]</i> <i>(Weinrich)</i> <u>Chattanooga</u> <i>James Petty Jr.</i> <i>[Cumberland] (Penna)</i>		<u>Rome</u> James Robinson [Thomas] (Luskin)
8/11/03	4	<u>Chattanooga</u> <i>Vanessa Giddons</i> <i>[Turner] (Weinrich)</i> <u>Chattanooga</u> <i>Marjorie Coins</i> <i>[Cumberland] (Penna)</i>		<u>Rome</u> Darryl Patterson [Thomas] (Luskin)

8/12/03	9	<u>Chattanooga</u> Thomas Weber [Putman] (Bennington) <u>Chattanooga</u> James Mitchell Petty Jr. [Foster & Lay] (Penna)	<u>Already Completed</u> Janice Burch Risley [Thomas] (Luskin)	<u>Rome</u> POSTPONED Channon Walls [Franklin-Strickland] (Higney)
8/12/03	1	<u>Chattanooga</u> Barbara Brannum [Turner] (Weinrich) <u>Chattanooga</u> Arnold Russell [Foster & Lay] (Penna)		<u>Rome</u> POSTPONED Celeste Walls [Franklin-Strickland] (Higney)
8/12/03	4	<u>Chattanooga</u> Peggy Hamblin [Turner] (Weinrich) <u>Chattanooga</u> James Petty Jr. [Foster & Son] (Penna)		<u>Rome</u> Robert Patterson [Wann] (Campbell)
8/13/03	9	<u>Chattanooga</u> Jenny Smith [Franklin-Strickland] (Higney) <u>Chattanooga</u> Phillip Dills [Foster & Son] (Penna)		<u>Rome</u> Michelle Moore [Turner] (Weinrich)
8/13/03	1	<u>Chattanooga</u> Steven Smith [Franklin-Strickland] (Higney)		<u>Rome</u> Nancy Jones [Turner] (Weinrich)
8/13/03	4	<u>Chattanooga</u> Stanton Smith [Franklin-Strickland] (Higney)		<u>Rome</u> Lee Kile [Turner] (Weinrich)
8/14/03	9			<u>Rome</u> Sue Markley [Wann] (Campbell) <u>Chattanooga</u> Romona Waller [Taylor] (Luskin)
8/14/03	1	<u>Chattanooga</u> Kerry Sutton [Taylor] (Luskin)		<u>Rome</u> John A. White [Turner] (Weinrich)

8/14/03	4	<u>Chattanooga</u> Terry Weber [Putman] (Bennington)		<u>Rome</u> Darren Dwayne Lee [Turner] (Weinrich)
8/15/03	9	<u>Chattanooga</u> John Fairbanks [Buckner-Rush] (Higgins)		<u>Rome</u> Shelia Manis [Peeples] (Rogers)
8/15/03	1	<u>Chattanooga</u> Debbie Fairbanks [Buckner-Rush] (Higgins)		<u>Rome</u> Dean Strong [Peeples] (Rogers)
8/15/03	4	<u>Chattanooga</u> Selma Huart [Buckner- Rush] (Higgins)		<u>Rome</u> Lisa Goranson [Peeples] (Rogers)
8/18/03	9	<u>Chattanooga</u> CW Curtis [Turner] (Weinrich)	<u>Rome</u> Etta Smith [To be served with subpoena] (Rogers)	<u>Rome</u> Dr. John Edkins [Julian Peeples] (Hawkins)
8/18/03	1	<u>Chattanooga</u> Ann Thowart [Turner] (Weinrich)	<u>Rome</u> Elizabeth Schwartz [Peeples] (Rogers)	
8/18/03	4	<u>Chattanooga</u> Patricia Rudzinsky [Turner] (Weinrich)		
8/19/03	9	<u>DUPLICATE</u> Thomas Weber [Putman] (Bennington) <u>Chattanooga</u> Dorathy Gregory [Wann] (Patty)		<u>Rome</u> Sylvia Warren [Peeples] (Rogers)
8/19/03	1	<u>RESCHEDULED</u> Terry Weber [Putman] (Bennington) <u>Chattanooga</u> Colin York [Wann] (Patty)		<u>Rome</u> Willaim Haddon [Peeples] (Rogers)
8/19/03	4	<u>Chattanooga</u> Lee Townsend [Turner] (Weinrich)		<u>Rome</u> Marjorie Daelke [Peeples] (Rogers)
8/20/03	9	<u>Chattanooga</u> Joseph Weber [Putman] (Bennington)		<u>Rome</u> Louis E. Hunziker [Foster & Lay] (Penna)

8/20/03	1	<u>Chattanooga</u> Tess Cunningham [Putman] (Bennington)		<u>Rome</u> Myrtylene Mooney Pittman [Franklin- Strickland] (Higney)
8/20/03	4	<u>Chattanooga</u> Elizabeth Webb [Turner] (Weinrich)		<u>Rome</u> Ruth T. Daniels [Franklin-Strickland] (Higney)
8/21/03	9	<u>Chattanooga</u> Loretta Bates [Buckner- Rush] (Higgins)	<u>Rome</u> Van Gravitt [Peeples] (Rogers)	<u>Rome</u> Mary Newton [Putman] (Bennington)
8/21/03	1	<u>Chattanooga</u> Anna Bates [Buckner- Rush] (Higgins)	<u>Rome</u> Johnny Gravitt [Peeples] (Rogers)	<u>Rome</u> Anne Goodhew [Wann] (Campbell)
8/21/03	4	<u>Chattanooga</u> William Mason Jr. [Buckner-Rush] (Higgins)	<u>Rome</u> Donald Gravitt [Peeples] (Rogers)	
8/22/03	9	<u>Chattanooga</u> Shawn Everson [Buckner-Rush] (Higgins)	<u>Rome</u> Larry Gravitt [Peeples] (Rogers)	
8/22/03	1	<u>Chattanooga</u> Mary Fason [Buckner- Rush] (Higgins)	<u>Rome</u> Christopher Lee [Peeples] (Rogers)	
8/22/03	4	<u>Chattanooga</u> Sandra Wright [Turner] (Weinrich)		
8/25/03	9	<u>Chattanooga</u> Kim Craig [Buckner- Rush] (Higgins)		
8/25/03	1	<u>Chattanooga</u> Shirley Tolf [Buckner- Rush] (Higgins)		
8/25/03	4	<u>Chattanooga</u> Nancy Smith [Buckner- Rush] (Higgins)		
8/26/03	9	<u>Chattanooga</u> Joye Wessells [Chattanooga] (Davis)		<u>Rome</u> Jimmie Weilbacher [Buckner-Rush] (Higgins)

8/26/03	1	<u>CANCELED</u> John Wessells [Chattanooga] (Davis) <u>Chattanooga</u> Robin Harper [Wann] (Patty)		<u>Rome</u> Norman Jenison II [Buckner-Rush] (Higgins)
8/26/03	4	<u>Chattanooga</u> Barbra Tesar [Chattanooga] (Davis)		<u>Rome</u> Norman Jenison III [Buckner-Rush] (Higgins)
8/27/03	9	<u>Chattanooga</u> Glen Burks [Turner] (Weinrich)		<u>DECEASED</u> Helen Mathis [Buckner- Rush] (Higgins)
8/27/03	1	<u>Chattanooga</u> Belinda Hixson [Turner] (Weinrich) <u>Chattanooga</u> Janice Moore [Buckner- Rush] (Higgins)		<u>RESCHEDULED</u> Janice Moore [Buckner- Rush] (Higgins)(should be DRS)
8/27/03	4	<u>Chattanooga</u> Lena Hall [Turner] (Weinrich) <u>Chattanooga</u> Jo Ann Burchman [BUCKner-Rush] (Higgins)		<u>RESCHEDULED</u> Jo Ann Burch [Buckner- Rush] (Higgins)(should be DRS)
8/28/03	9	<u>Chattanooga</u> Ginger Guess [Turner] (Weinrich)		<u>Rome</u> John Crabtree [Jennings] (Davis)
8/28/03	1	<u>Chattanooga</u> Michelle Neese [Turner] (Weinrich)		<u>Rome</u> Jamie Crabtree [Jennings] (Davis)
8/28/03	4	<u>Chattanooga</u> Constance Ream [Turner] (Weinrich)		<u>CANCELED</u> Mary Clark [Kenemer] (Davis)
8/29/03	9	<u>Chattanooga</u> Velma Staton [Turner] (Weinrich)		<u>Rome</u> Daniel Green [Kenemer] (Davis)

8/29/03	1	<u>Chattanooga</u> <i>Lucille Sweeney</i> [Turner] (Weinrich)	<u>Rome</u> Herman Lasater [Kenemer] (Davis)	
8/29/03	4	<u>Chattanooga</u> <i>Rhonda Dunn</i> [Turner] (Weinrich)		

EXHIBIT "H"

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ROME DIVISION

4
5 IN RE: TRI-STATE)
6 CREMATORY LITIGATION) MDL DOCKET NO. 1467

7 NOTARY'S CERTIFICATION RE FAILURE OF WITNESS
8 TO APPEAR FOR THE TAKING OF HER DEPOSITION

9 I, Penny J. McPherson, Certified Court
10 Reporter and Notary Public within and for the State
11 of Georgia, do hereby certify:

12 That at the request of the law firm of
13 Brinson, Askew, Berry, Seigler, Richardson & Davis,
14 LLP, attorneys for the Defendant Funeral Homes and on
15 behalf of SCI Defendants in the above-styled case, I
16 appeared at 701 Market Street, Chattanooga,
17 Tennessee, on the 28th day of August 2003, at the
18 hour of 9:00 a.m., for the purpose of placing under
19 oath and taking the deposition of Ginger Guest,
20 plaintiff in the above-styled case.

21 I further certify that I remained at said
22 address until 9:35 a.m., during which time witness
23 did not appear.

24
25
BROWN
Reporting INC.

1740 Peachtree St. N.W.
Atlanta, GA 30309
404-876-8979

1 Mr. Walter Weinrich, attorney for the
2 Defendant Turner Funeral Home, made a statement for
3 the record as follows:

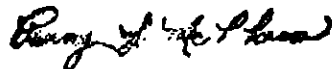
4 MR. WEINRICH: Good morning. My name
5 is Walter Weinrich. I'm one of the
6 attorneys for Turner Funeral Home. Today
7 is Thursday, August 28th.

8 It's now approximately 9:35. We were
9 scheduled to take the deposition of Ginger
10 Guest in the matter before Judge Murphy in
11 the MDL action.

12 Present are plaintiffs' attorney,
13 Allen Murphy, as well as counsel for the
14 Marsh defendants and a representative of the
15 lead liaison counsel's office.

16 Ms. Guest has failed to appear. We'd
17 like the opportunity to reNotice her
18 deposition at a later date. Thank you.

19 MR. MURPHY: Thanks.

20
21 

22 PENNY J. McPHERSON, CCR-B-914
23 My commission expires on the
24 26th day of October 2004.
25

EXHIBIT "I"

1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE: TRI-STATE)
CREMATORY LITIGATION) MDL DOCKET NO. 1467

VIDEOTAPED DEPOSITION OF
GINGER GUEST

October 17, 2003

9:00 a.m.

300 The Heritage Center
736 Cherry Street
Chattanooga, Tennessee

Carl R. Forte, RMR, CRR, CCR-A-597

BROWN
Reporting INC.

1740 Peachtree St, N.W.
Atlanta, GA 30309
404-876-8979

APPEARANCES OF COUNSEL

On behalf of the Plaintiffs:

J. ALLEN MURPHY, JR., Esq.
David Randolph Smith & Associates
1910 Acklen Avenue
Hillsboro Village
Nashville, Tennessee 37212

On behalf of the Defendant
Turner Funeral Home, Inc.:

WALTER J. WEINRICH, Esq. (Via telephone)
Nelson, Levine, deLuca & Horst, LLC
280 Three Valley Square
512 Township Line Road
Blue Bell, Pennsylvania 19422

Lead Counsel for Defendant Funeral Homes and
on behalf of SCI Defendants:

KRISTY L. CORDLE, Esq.
Brinson, Askew, Berry, Seigler,
Richardson & Davis, LLP
The Omberg House
615 West First Street
Rome, Georgia 30161

On behalf of the Defendants
T. Ray Marsh, Clara Marsh and T. Ray Brent Marsh:

LINDA W. BRUNT, Esq.
Jenkins & Olson, P.C.
15 South Public Square
Cartersville, Georgia 30120-3150

1 On behalf of the Defendant Tri-State Crematory:

2 VICKI L. JAMES, Esq.
3 Goins, Carpenter & James
4 Suite 300 The Heritage Center
736 Cherry Street
Chattanooga, Tennessee 37402

5 Videographer: Duke Korey
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1 (Reporter disclosure made pursuant to
2 Article 8.B. of the Rules and Regulations
3 of the Board of Court Reporting of the
4 Judicial Council of Georgia.)

5 MR. WEINRICH: Good morning, my
6 name's Walter Weinrich, I'm one of the
7 attorneys for Turner Funeral Home. Today
8 is Friday, October 17th. We're scheduled
9 to take the deposition of Ms. Ginger Guest,
10 G-u-e-s-t.

11 I'm going to ask that the other
12 attorneys present to identify themselves
13 for the record.

14 MS. BRUNT: My name is Linda Brunt,
15 and I am here on behalf of the Marsh family
16 and Tri-State Crematory.

17 MS. JAMES: Okay. I'm Vicki James,
18 I'm also here on behalf of the Marsh family
19 and Tri-State Crematory with respect to the
20 Tennessee plaintiffs.

21 MS. CORDLE: I am Kristy Cordle, and
22 I am here on behalf of the funeral home
23 defendants.

24 MR. MURPHY: And I'm Allen Murphy,
25 I'm here on behalf of the plaintiff.

1 MR. WEINRICH: Ms. Ginger Guest's
2 deposition was scheduled for 9:00 a.m. this
3 morning. It is now approximately 9:50 and
4 Ms. Guest has failed to appear.

5 Ms. Guest's deposition testimony was
6 also scheduled for August 28th, at which
7 time she also failed to appear.

8 MR. MURPHY: Okay. Let me put this
9 on the record. It's my understanding, I
10 think I explained this to you, that the
11 reason that she wasn't there for the first
12 date was because she was in a mental
13 institution at the time. And I'm not -- it
14 is my understanding she was out.

15 However, I did make inquiries this
16 morning to try to locate her, and when I
17 spoke with the office of Coppedge & Leman,
18 they said they had spoken with one of her
19 relatives who indicated that there had been
20 some problems in South Pittsburg this week,
21 and that she'd gone up to South Pittsburg
22 and not been staying at her residence. And
23 that's really all that I know at this time.

24 But like I said, I would say that
25 this is a special case; someone who has

1 been -- whose problems have been
2 exasperated by the events at Tri-State
3 Crematory. So, you know, as soon as we can
4 get in touch with her, we will try again to
5 set up. But I do know that she has had
6 some true medical problems recently.

7 MR. WEINRICH: With that said, we'll
8 reserve the right to recall her and take
9 her deposition, if necessary. Thank you.

10 MR. MURPHY: Thank you.

11 MS. CORDLE: Thanks.

12 MS. BRUNT: Thanks.

13 (Deposition concluded at 9:53 a.m.)
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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 6 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 17th day of October, 2003.

Carl R. Forte

Carl R. Forte, CCR-A-597
My commission expires on the
1st day of April, 2007.